

# ATV and Snowmobile Liability

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# Purpose for our Training Workshop

- Review NYS law for roadway designation
- Assist municipalities with liability controls for property, trails and environmental responsibilities
- Review risk transfer techniques
- Review Prior Notice Law requirements
- PLEASE – save your individual questions for the end of the program – there will be plenty of time to address particular situations then.





# ATV/Snowmobile Roadway Use

- Designated Roads for ATV Use
- NYS Vehicle and Traffic Law – Section 2405
- Requirements for ATVs
- Designated Roads for Snowmobile Use
- Requirements for Snowmobiles
- Safety Programs for ATV/Snowmobiles
- Local laws vs. NYS laws (can't supercede)
- NYS General Obligations Law/Recreational Use Statue (qualified immunity)
- SEQR – State Environmental Quality Review

# NYS Vehicle Traffic Law – Section 2405

- Municipality may designate and post any such public highway or portion thereof as open for travel by ATVs when in the determination of the governmental agency concerned, it is otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway. Such designations shall be by local law or ordinance.
- Signage and Markers
- Local Law or Ordinance may include rules and impose restrictions and conditions for the regulation and safe operation of ATVs.

# Designated Roads for ATV Use

- The authority of the town to designate a road open for use by ATVs is predicated upon determination by the town board that there are areas or trails:
  - Adjacent to that road
  - Are “otherwise impossible” to access
- Each municipality may only act with respect to highways under its jurisdiction.
- Town roads are NOT to be used as an alternative to trails or areas where none exist.
- SEQR compliance

# Requirements for ATVs

- ATV must be registered with DMV
- Insurance – minimum required coverage of \$50,000/\$100,000 for death, \$25,000/\$50,000 for injury and \$10,000 for property damage.
- Ages 10-15 can operate only with Adult Supervision or on designated lands with a completed ATV safety training course.
- Only access to **designated and posted** highways
- Required equipment – helmet.



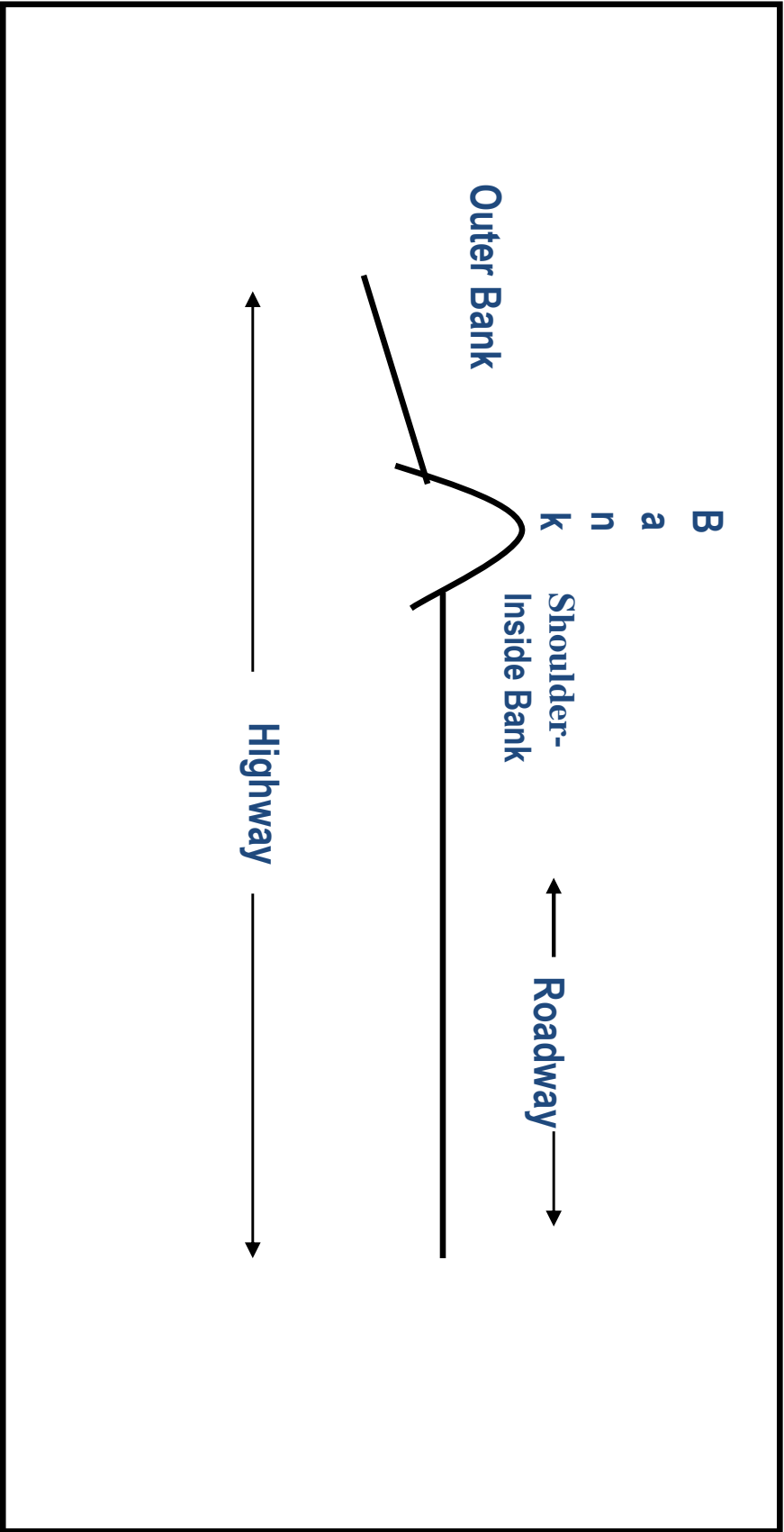
## **Designated Roads for Snowmobile Use – Parks, Recreation and Historical Preservation Law 25.05**

- Municipality may enact local laws or ordinances to address the use of snowmobiles on highways and public lands, which may include restrictions and conditions for the regulation and safe operation of snowmobiles.
- Once highway has been designated and posted, snowmobiles may be operated on the shoulders and inner banks of those highways.
- Signage – NYS Snowmobile Trail Signage Handbook

# Designated Roads for Snowmobile Use

- May access highways for a distance not to exceed 500 yards to gain access to trails, if it is “otherwise impossible” to gain access to these trails.
- Snowmobiles may be operated on designated (by local law or ordinance) highways that are customarily unplowed or unused by wheeled vehicles during the winter months – roads still have to be posted as both seasonal roadways and snowmobile use.
- SEQR Compliance

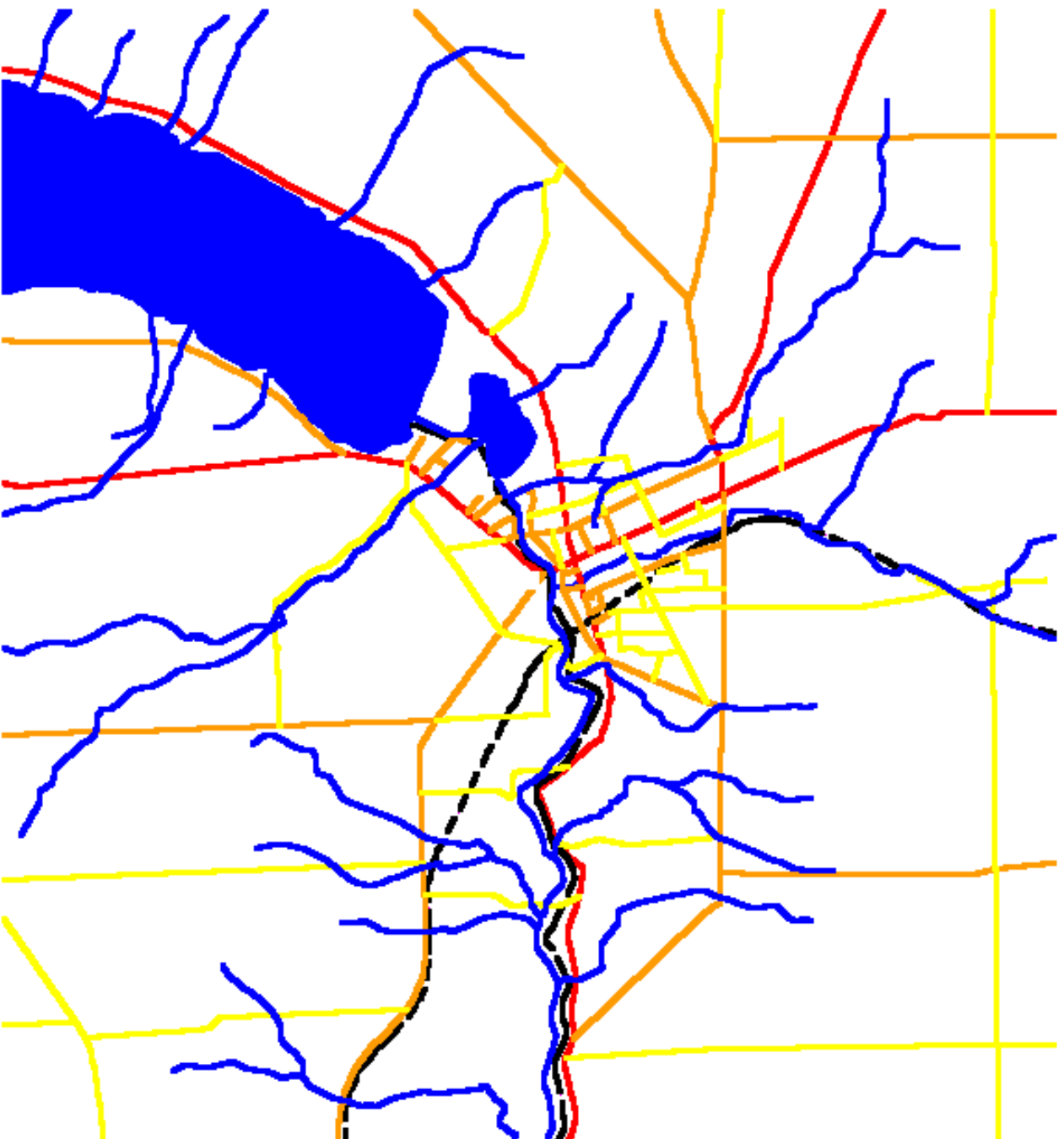
# Composition of a Typical Highway



# SEQR – State Environmental Quality Review

- Environmental Impact Study required prior to roadway and/or trail designation
- Environmental Assessment Form (EAF)
- Public Hearings may be required
- Compliance can be questioned through Article 78 (NYS Civil Practice Law and Rules) legal action
- NYS court system consistently ruled in favor of strong compliance with SEQR

# Level of Service



All Roads

# Minimize Your Municipal Liability

- If your municipality owns properties which are used by ATVs and/or snowmobiles, your liability exposure is greater and reasonable care is required to maintain the facilities and warn the public of defects or dangers. Develop a comprehensive inspection program which is documented and reviewed with the following minimum requirements:
  - ○ Post rules regarding ATV/snowmobile use;
  - ○ Periodically inspect the trails and surrounding areas;
  - ○ Remove physical hazards that obstruct pathways;
  - ○ Post warning signs for terrain changes (lakes, ponds, dead end roads.)
  - ○ Maintain roads and trails in a reasonably safe condition

# Recreational Use Statute

- The recreational use statute extends broad immunity from liability to private as well as government landowners against claims for ordinary negligence brought by members of the public who come on their property to engage in certain enumerated activities where the land is suitable for those activities.
- This statute provides that landowners who gratuitously allow persons to use their property for certain enumerated recreational activities are not liable for injuries unless they were caused by willful or malicious acts or omissions of the owner.
- NYS General Obligations Law 9-103 provides that landowners are granted limited liability for the use of their property for certain recreational purposes such as hunting, fishing, canoeing, boating, trapping, hiking, cross-country skiing, tobogganing, sledding, horseback or bicycle riding, motorized vehicle operation for recreational purposes, and snowmobiling.
- The courts in New York have extended the protection of the Recreational Use Statute to state and municipal landowners, whether or not the land is specifically designated for such use. However, the courts have refused to extend this protection to publicly-owned land that is maintained and supervised as a recreational area, park, or playground.

# Recreational Use Statute

- Municipalities may be liable for ATV/Snowmobile injuries under the statute if:
  - The muni engaged in willful or malicious conduct
  - If permission to use the property was given for consideration (money)
  - When the damaged/injured party was injured by someone given permission by the muni to operate on the roadway and the damaged/injured party was owed a duty of care by the municipality



# Recent Case Law

- **NYS vs. Town of Horicon**
  - Court annulled town ATV law
- **NYS vs. Town of Leyden**
  - State Supreme Court annulled town ATV law
- **Morales vs. Coram Materials Corp.**
  - Gen. Obligations Law for property use – SUITABILITY of property was at issue!
- **Santagate vs. Franklin County**
  - Court annulled town ATV law
- **Brown vs. Town of Pitcairn**
  - State Supreme Court annulled town ATV law
- **NYS vs. Town of Lyonsdale**
  - State Supreme Court is currently reviewing this case

# Insurance Claims

- ATV operating on designated snowmobile trail
- Snowmobile access road – chain barrier installed
- Trail maintenance in question, snowmobile malfunction
- ATV roll-over, possible roadway hazard w/storm drain
- Oil & Stone roadway, ATV accident, possible roadway maintenance issue

# Liability Issues

- Rules/Regulations for Use
- Trail grooming/maintenance
- Signage
- Trail/Rule Enforcement
- Contracted Groups for Grooming/Maintenance/Signage, etc.
- Trail Mapping
- Written Prior Notice Law/Notice of Defect

# Prior Notice Law in NYS

- PWN laws require written notice as prescribed in the law to the Town Clerk or Town Superintendent of Highways
- They don't prevent accidents – they help win lawsuits
- In general – actual notice isn't sufficient to create liability (major exception: Town creates the condition)
- Actual Notice vs. Constructive Notice

# Trail Maintenance

- Periodic, documented inspections
- Posted signage – compliance with standards
- Rules for Use posted/Enforcement
- Reporting format for defects
- Warning equipment on vehicles
- Contracted Maintenance
  - Written agreement
  - Risk Transfer

# ATV/Snowmobile Liability Issues

- General Liability (Bodily Injury or Property Damage)
  - Trail and Street intersections
  - Roadway Use for ATVs & Snowmobiles
  - Trail Maintenance
- Automobile Liability (Bodily Injury or Property Damage)
  - Municipal Vehicle Collides with ATV/Snowmobile

# ATV/Snowmobile Liability Issues

- Public Officials Liability (Errors and Omissions)
  - Quality of Life
  - Diminished Property Value
  - Possible Coverage Exclusions
  - Challenge to Municipal Law – Article 78 vs. monetary reward

# ATV/Snowmobile Liability Issues

- Issues to Discuss with Your Insurance Carrier:
  - Does your Municipality have a current ATV and Snowmobile Law(s)?
  - Does your Municipality own or maintain an ATV or snowmobile trail system?
  - Has information been submitted to your insurance carrier and/or Broker?



# Why Use Risk Transfers

- Transfers responsibility to do something
- Transfers responsibility to pay for something
- Compels a third-party to indemnify or hold someone harmless
- Compels a third-party to release another
- ...to improve and optimize our subscribers' ability to reduce risk financing costs

# Types of Risk Transfer

- Hold Harmless/Indemnification Agreements
  - Use of Facilities
  - Contracts, Bid Specifications, Agreements
- Certificates of Insurance
  - Name Municipality as an Additional Insured
  - Appropriate coverages and limits
    - Coverages – GL, Workers' Comp., etc.
  - Facility Use
  - Contractors

# Additional Insured Endorsements

- Most courts interpret the terms of the endorsement to decide the extent of the transfer
- “Arising out of” often interpreted to mean full coverage for direct as well as vicarious liability
- ISO AI endorsements have become more restrictive over time
  - Restrict coverage to “on going operations” only
  - Require a written contract
  - Establish a fault-based system for endorsements

# Additional Resources

- Additional Information:
  - NYS Dept. of Motor Vehicles – *Information for ATV Owners and Operators*
  - NYS Snowmobiler's Guide
  - NYS Snowmobile Trail Sign Handbook
  - NYS Office of Parks, Recreation and Historic Preservation
  - *Tread Lightly – Guide to Responsible Snowmobiling*
  - *Tread Lightly – Guide to Responsible ATV Riding*

# Questions?



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Thank you for joining us today.